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MEMORANDUM:

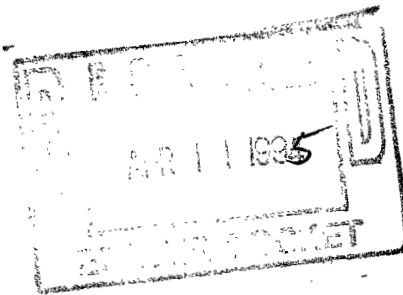
SUBJECT: Documents Exchanged with OMB During Review of Proposed
40 CFR Part 71

FROM: Candace Carraway
Operating Permits Group
Office of Air Quality Planning and Standards

TO: Docket file

DATE: February 8, 1995

Material sent to Office of Management and Budget for their
review between August 29, 1994 and January 27, 1995.



Documents Exchanged with OIRA
During Review of Proposed 40 CFR Part 71

submitted by

Candace Carraway
U.S. Environmental Protection Agency
Office of Air Quality, Planning and Standards

List of documents exchanged with OIRA during review
of proposed 40 CFR part 71

1. redline strikeout version of proposed regulation
2. cross-reference document for redline strikeout document
3. proposed preamble
4. faxed documents, dated 12-13-94
5. faxed document outlining proposed changes in regulation relating to permit fees (p. 165-168)
6. faxed documents dated 12-15-94
7. proposed changes to preamble and regulation relating to part 71 programs on Tribal lands (4 pages)
8. revised preamble, dated 12-29-94
9. first draft of "Supplementary Information for Proposed Federal Operating Permits Rule"
10. draft of Supplementary Information document, dated 1-12-95
11. revised preamble and regulations, dated 1-12-95
12. faxed documents outlining changes to proposed preamble and regulation relating to citizen petitions, dated 1-20-95
13. Federal Operating Permits Program Fees Cost Analysis

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by revising part 55 and adding a part 71 as set forth below.

PART 55--

1. Section 55.6 is proposed to be revised by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11 of this part.

* * * * *

2. Section 55.10 is proposed to be revised to read as follows:

§ 55.10 Fees.

(a) * * *

(1) EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * * * *

(b) OCS sources located beyond 25 miles of States' seaward boundaries. EPA will calculate and collect fees in accordance with the requirements of 40 CFR part 71.

* * * * *

3. Section 55.13 is proposed to be revised by adding paragraph (f) as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * * * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

Part 71--

((Note: Material in bold enclosed by double parentheses sets forth alternative proposal regarding revision of permit terms that prescribe monitoring or recordkeeping procedures.))

PART 71--FEDERAL OPERATING PERMITS PROGRAM

PART 70--STATE OPERATING PERMIT PROGRAMS

~~71.1~~70.1 Program overview.

~~71.2~~70.2 Definitions.

71.3 Sources subject to permitting requirements.

~~70.3~~ Applicability.

71.4 Program implementation.

~~70.4~~ State program submittals and transition.

~~71.5~~70.5 Permit applications.

~~71.6~~70.6 Permit content.

~~71.7~~70.7 Permit review, issuance, renewal, reopenings, and revisions.

71.8 Affected State review.

~~70.8~~ Permit review by the EPA and affected States.

71.9 Permit fees.

~~70.9~~ Fee determination and certification.

71.10 Delegation of part 71 program.

~~70.10~~ Federal oversight and sanctions.

71.11 Administrative record, public participation, and administrative review.

~~70.11~~ Requirements for enforcement authority

71.12 Prohibited acts.

Authority: 42 U.S.C. 7401, et seq.

~~§ 71.1~~~~§ 70.1~~ Program overview.

(a) ~~This part sets forth the~~~~The regulations in this~~
~~part provide for the establishment of comprehensive Federal~~
~~air quality operating permits permitting program~~~~State air~~
~~quality permitting systems consistent with the requirements~~

of title V of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.) ~~and defines the requirements and These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.~~ issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V and this part ~~these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.~~

(c) ~~(d)~~ The requirements of this part ~~part 70~~, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, as provided herein or as modified by title IV of the Act and regulations promulgated thereunder ~~modified in regulations promulgated under title IV of the Act (acid rain program).~~

(d) ~~(e)~~ Issuance of State permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) ~~--~~

under the Clean Water Act (33 U.S.C. 1251, et seq.), whether issued by the State, the U. S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e)~~(e)~~ Nothing in this part shall prevent a State, ~~or interstate permitting authority,~~ from administering an operating permits program and establishing additional ~~or~~ more stringent requirements not inconsistent with ~~the~~ this Act. ~~The EPA will approve State program submittals to the extent that they are not inconsistent with the Act and these regulations. No permit, however, can be less stringent than necessary to meet all applicable requirements. In the case of Federal intervention in the permit process, the Administrator reserves the right to implement the State operating permit program, in whole or in part, or the Federal program contained in regulations promulgated under title V of the Act.~~

§ 71.270.2 Definitions.

The following definitions apply to part 71.70. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended,
42 U.S.C. 7401, et seq.

Administrator or EPA means the Administrator of the U. S. Environmental Protection Agency (EPA) or his or her designee.

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are: ~~all States:~~

(1) ~~All States and Tribal areas whose~~ whose air quality may be affected and that are contiguous to the State or ~~Tribal area~~ ~~area under tribal jurisdiction~~ in which ~~thea~~ ~~part 70~~ permit, permit revision or permit renewal is being proposed; or ~~that are within 50 miles of the permitted~~ source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is eligible to be treated in the same manner as a State.

(2) The State or Tribal area in which a part 71 permit, permit revision, or permit renewal is being proposed.

~~(2) That are within 50 miles of the permitted source.~~

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(4) Except as provided in paragraph (3) of this definition, the term "affected State" does not include any local agency, district, or interstate program.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Applicable requirement means all of the following as they apply to emissions units in a part ~~71~~70 source

(including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by ~~the~~ EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any requirement enforceable by the Administrator ~~or~~ and by citizens under the Act that limits emissions for ~~the~~ purposes of creating offset credits or for complying with or avoiding ~~the~~ applicability of applicable requirements;

(3) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(4) Any standard or other requirement under section 111 of the Act, including section 111(d);

(5) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(6) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

(7) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(8) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(9) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(10) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(11) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(12) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under sections 608 or 609 of title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V part 70 permit, and any standard or other requirement under any other section(s) of title VI of the Act that the Administrator determines should be contained in a title V part 70 permit; and

(13) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, tribal agency, or other agency authorized by the Administrator pursuant to

~~§ 71.10 of this part to carry out all or part of a permit program under part 71.~~

Designated representative shall have the meaning given to it in section 402(26) of the Act and the regulations promulgated thereunder.

Draft permit means the version of a permit for which the permitting authority offers public participation under ~~§ 71.7 or § 71.11 of this part~~~~70.7~~ and/or affected State review under ~~§ 71.8 of this part~~~~70.8~~.

Eligible Indian Tribe or Eligible Tribe means a Tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

~~The EPA or the Administrator means the Administrator of the EPA or his or her designee.~~

Federal Indian Reservation, Indian Reservation or Reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final action or final permit action means the issuance or denial of a part 71 permit, permit renewal, or permit revision by the permitting authority, which has completed all review procedures required by § 71.7, § 71.8, and § 71.11 of this part and is subject to administrative appeal and judicial review.

~~Final permit means the version of a part 70 permit issued by the permitting authority that has completed all review procedures required by §§ 70.7 and 70.8.~~

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part ~~71~~70 permit that meets the requirements of § ~~71.6(d)~~ of this part ~~70.6(d)~~.

Indian Tribe or Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Insignificant activity or emissions means those activities, operations, and emissions levels which meet the criteria listed in § 71.5(g) of this part for exemption from the documentation and reporting requirements of § 71.5(f) of this part.

Major new source review (major NSR) means a title I program contained in an EPA-approved or promulgated implementation plan for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under the EPA regulations implementing parts C or D of title I of the Act.

Major source means any stationary source or group of stationary sources as described in paragraph (1), (2), or (3) of this definition. For purposes of paragraphs (2) and (3), major stationary source includes any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping. For the purposes of defining "major source" in paragraph (2) or (3) of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. In

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addition, for purposes of paragraphs (2) and (3) of this definition, ~~any facility~~~~any stationary source (or group of stationary sources)~~ that supports ~~another~~ source, where both are under ~~the~~~~common~~ control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source, regardless of the 2-digit code of that facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least 50 percent of the output of the support facility is dedicated to the source.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tons/yr) or more of any hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which has been listed pursuant to section 112(b) of the Act, 25 tons/yr or more of any combination of such ~~HAP~~~~hazardous air pollutants~~ (including any fugitive emissions of such pollutants), or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall

not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tons/yr or more of any air pollutant (including any fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act or for the purposes of paragraph (3) of this definition, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;

- (x) Petroleum refineries;
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants (furnace process);
 - (xvi) Primary lead smelters;
 - (xvii) Fuel conversion plants;
 - (xviii) Sintering plants;
 - (xix) Secondary metal production plants;
 - (xx) Chemical process plants;
 - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (xxiii) Taconite ore processing plants;
 - (xxiv) Glass fiber processing plants;
 - (xxv) Charcoal production plants;
 - (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- or
- (xxvii) All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons/yr or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons/yr or more in areas classified as "serious," 25 tons/yr or more in areas classified as "severe," and 10 tons/yr or more in areas classified as "extreme;" except that the references in this paragraph to 100, 50, 25, and 10 tons/yr of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tons/yr or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas, (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons/yr or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tons/yr or more of PM-10 or, where applicable, a PM-10 precursor.

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Minor new source review (minor NSR) means a title I program approved by EPA into a State's implementation plan under EPA regulations implementing section 110(a)(2) of title I of the Act for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under the EPA regulations implementing parts C or D of title I of the Act.

Part ~~71.70~~ permit, or permit (unless the context suggests otherwise) means any permit or group of permits covering a part ~~71.70~~ source that ~~has been~~ issued, renewed, amended, or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

~~Part 70 program or State program means a program approved by the Administrator under this part.~~

Part ~~71.70~~ source means any source subject to the permitting requirements of this part, as provided in ~~71.3(a) 70.3(a)~~ and § ~~71.3(b) of this part 70.3(b)~~.

Permit program costs means all reasonable (direct and indirect) costs required to develop and administer an operating permits permit program, as set forth in § ~~71.9(b) of this part. § 70.9(b)~~ (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

Permit revision means any ~~administrative permit amendment,~~ de minimis permit revision, minor permit revision, ~~or significant permit revision or administrative permit amendment~~

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs; ~~or~~

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

~~(3) (2)~~ The State air pollution control agency, local agency, other State agency, Indian tribe, or other agency with an approved part 70 program. ~~or other agency authorized by the Administrator to carry out a permit program under this part.~~

Potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator and ~~by~~ citizens under the Act. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in title IV of the Act or the regulations promulgated thereunder.

Proposed permit means the version of a permit that the ~~delegate agency permitting authority~~ proposes to issue and forwards to the Administrator for review in compliance with ~~§ 71.10(d) of this part. 70-8.~~

Regulated air pollutant means the following:

- (1) Nitrogen oxides or any volatile organic compounds;
- (2) Any pollutant for which a national ambient air quality standard has been promulgated;
- (3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
- (5) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r) of the Act, including the following:
 - (i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
 - (ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirement.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of § 71.9(c) of this ~~part 70.9(b)(2)~~, means any "regulated air pollutant" except the following:

- (1) Carbon monoxide;
- (2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or
- (3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

- (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative for all actions, standards, requirements, or prohibitions under title IV of the Act or the regulations promulgated thereunder; or

(ii) The designated representative or a person meeting the provisions of ~~paragraph~~ (1), (2), or (3) of this definition for any other purposes under part ~~7170~~.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern ~~Marianas~~ Mariana Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities

within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

Title I modification or modification under any provision of title I of the Act means any modification under ~~part C or part~~ ~~parts C and D~~ of title I or sections 110(a)(2), 111(a)(4), 112(a)(5), or 112(g) of the Act; under regulations promulgated ~~thereunder~~ by EPA ~~thereunder~~ or in § 61.07 of part 61 of this chapter; or under State regulations approved by EPA to meet such requirements.

Tribal area means, for the purposes of the regulations under this part, those lands over which an Indian tribe has authority under the Clean Air Act to regulate air quality. These lands include all areas within the exterior boundaries of an Indian reservation and any other areas outside reservation boundaries that EPA determines to be within a Tribe's inherent authority.

~~Whole program means a part 70 permit program, or any combination of partial programs, that meet all the requirements of these regulations and cover all the part 70 sources in the entire State. For the purposes of this definition, the term "State" does not include local~~

~~permitting authorities, but refers only to the entire State, Commonwealth, or Territory.~~

~~§ 71.3 Sources Subject to Permitting Requirements.~~

~~§ 70.3 Applicability.~~

~~(a) Part 71 sources. The following sources are subject to the permitting requirements under this part:~~

~~(a) Part 70 sources. A State program with whole or partial approval under this part must provide for permitting of at least the following sources:~~

(1) Any major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential to emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the Act and is not otherwise required to obtain a permit under this part;

(2) Any source, including an area source (i.e., a nonmajor source), subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source (i.e., a nonmajor source), subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any source required to have a permit under parts C or D of title I of the Act;~~§ 7~~

(5) Any affected source; and

(6) Any source in a source category designated by the Administrator pursuant to this section.

(b) Source category exemptions.

(1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act ~~are may be~~ exempted from the obligation to obtain a part ~~7170~~ permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement ~~promulgated~~ under either section 111 or section 112 of the Act promulgated after July 21, 1992, the Administrator will determine whether to exempt any or all such sources from the requirement to obtain a part ~~7170~~ permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section ~~that is~~ exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part ~~7170~~ program.

(4) ~~The following source categories are exempted from the obligation to obtain a part 71 permit:~~

~~(4) Unless otherwise required by the State to obtain a part 70 permit, the following source categories are exempted from the obligation to obtain a part 70 permit:~~

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to part 60, Subpart AAA---Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

~~(c) Emissions units and part 70 sources.~~

~~(1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.~~

~~(2) For any nonmajor source subject to the part 70 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 70 program.~~

~~(d) Fugitive emissions. Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.~~

§ 71.4 Program Implementation.

(a) Part 71 programs for States. The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by November 15, 1995, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond November 15, 1995. The effective date of such a part 71 program is November 15, 1995.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or November 15, 1995, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or November 15, 1995, whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) Part 71 programs for Tribal areas. The Administrator may administer and enforce an operating

permits program for a Tribal area, as defined in § 71.2 of this part, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full approval by the Administrator by November 15, 1995. The effective date of such a part 71 program is the date the Administrator provides written notice to the governing body over such area that the Administrator is administering and enforcing such a program.

(c) Part 71 programs imposed due to inadequate implementation.

(1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) Part 71 programs for OCS sources.

(1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) of this part shall become effective upon the effective date of promulgation of these regulations.

(3) The requirements of § 71.4(d)(1)(ii) of this part shall become effective upon the effective date of a part 71 program for the corresponding onshore area.

(e) Part 71 program for permits issued to satisfy an EPA objection. Using the procedures of this part and 40 CFR 70.8(c) or (d), or 40 CFR 70.7(g)(4) or (5)(i) and (ii), as appropriate, the Administrator will deny, terminate, modify, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and §§ 70.8(c) and (d) of this chapter;

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, modify, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of paragraph (e) of this section shall become effective upon the effective date of promulgation of these regulations.

(f) Use of selected provisions of this part. The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) Public notice of part 71 programs. In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the Federal Register informing the public of such action and the effective date of any part 71 program as set forth in § 71.4(a), (b), (c), or (d)(1)(ii) of this part. This rulemaking serves as the notice for the part 71 permit programs described in §§ 71.4(d)(1)(i) and (e) of this part. The EPA will also publish a notice in the Federal Register of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10 of this part. In addition to notices published in the Federal Register under this paragraph, the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area

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subject to the part 71 program effectiveness or delegation, and will send a letter to the tribal governing body for an Indian tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) Effect of limited deficiencies in State or Tribal programs. The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) Transition plan for initial permit issuance. If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.

(j) Delegation of part 71 programs. The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10 of this part, however, delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the notice referred to in paragraph (g) of this section will define the respective roles of the State or eligible Tribe and the Administrator in administering and enforcing the part 71 operating permits program.

(k) EPA administration and enforcement of part 70 permits. When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not

adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, modify, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9 of this part.

(1) Transition to approved part 70 program. The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribe operating permits program that fully meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen,

modify, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to the delegate agency, the delegate agency will revise, reopen, modify, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(n) of this part, shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(3) The Administrator shall rescind the part 71 permit for a source when it is replaced by a part 70 permit issued under the approved part 70 program.

(m) Exemption for certain territories. Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the

Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of sections 112(g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph shall be considered final action by the Administrator for the purposes of section 307(b).

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph and of the approval or rejection of such petition and the basis for such action.

(n) Retention of records. The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

~~§ 70.4 State program submittals and transition.~~

~~(a) Date for submittal. Not later than November 15, 1993, the Governor of each State shall submit to the Administrator for approval a proposed part 70 program, under State law or under an interstate compact, meeting the requirements of this part.~~

~~(b) Elements of the initial program submission. Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:~~

~~(1) A complete program description describing how the State intends to carry out its responsibilities under this part.~~

~~(2) The regulations that comprise the permitting program, reasonably available evidence of their procedurally correct adoption, (including any notice of public comment and any significant comments received on the proposed part 70 program as requested by the Administrator), and copies of all applicable State or local statutes and regulations including those governing State administrative procedures that either authorize the part 70 program or restrict its implementation. The State shall include with the regulations any criteria used to determine insignificant activities or emission levels for purposes of determining complete applications consistent with § 70.5(c).~~

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~~(3) A legal opinion from the Attorney General for the State, or the attorney for those State, local, or interstate air pollution control agencies that have independent legal counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State agency in court on all matters pertaining to the State program. The legal opinion shall also include a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out each of the following:~~

~~(i) Issue permits and assure compliance with each applicable requirement and requirement of this part by all part 70 sources.~~

~~(ii) Incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into part 70 permits consistent with § 70.6.~~

~~(iii) Issue permits for a fixed term of 5 years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed 5 years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act.~~

~~(iv) Issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and review such permits at least every 5 years. No permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.~~

~~(v) Incorporate into permits all applicable requirements and requirements of this part.~~

~~(vi) Terminate, modify, or revoke and reissue permits for cause.~~

~~(vii) Enforce permits, permit fee requirements, and the requirement to obtain a permit, as specified in § 70.11.~~

~~(viii) Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 114(c) of the Act.~~

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~~(ix) Not issue a permit if the Administrator timely objects to its issuance pursuant to § 70.8(c) or, if the permit has not already been issued, to § 70.8(d).~~

~~(x) Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the applicable public participation process provided pursuant to § 70.7 and any other person who could obtain judicial review of such actions under State laws.~~

~~(xi) Provide that, solely for the purposes of obtaining judicial review in State court for failure to take final action, final permit action shall include the failure of the permitting authority to take final action on an application for a permit, permit renewal, or permit revision within the time specified in the State program.~~

~~(xii) Provide that the opportunity for judicial review described in paragraph (b)(3)(x) of this section shall be the exclusive means for obtaining judicial review of the terms and conditions of permits, and require that such petitions for judicial review must be filed no later than 125 days after the final permit action, or such shorter time as the State shall designate. Notwithstanding the preceding requirement, petitions for judicial review of final permit actions can be filed after the deadline designated by the State, only if they are based solely on grounds arising after the deadline for judicial review. Such petitions shall be filed no later than 125 days after the new grounds~~

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~~for review arise or such shorter time as the State shall designate. If the final permit action being challenged is the permitting authority's failure to take final action, a petition for judicial review may be filed any time before the permitting authority denies the permit or issues the final permit.~~

~~(xiii) Ensure that the authority of the State/local permitting Agency is not used to modify the acid rain program requirements.~~

~~(4) Relevant permitting program documentation not contained in the State regulations, including the following:~~

~~(i) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program; and~~

~~(ii) Relevant guidance issued by the State to assist in the implementation of its permitting program, including criteria for monitoring source compliance (e.g., inspection strategies).~~

~~(5) A complete description of the State's compliance tracking and enforcement program or reference to any agreement the State has with EPA that provides this information.~~

~~(6) A showing of adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within~~

~~18 months of the date of their submittal, except for initial permit applications, for which the permitting authority may take up to 3 years from the effective date of the program to take final action on the application, as provided for in the transition plan.~~

~~(7) A demonstration, consistent with § 70.9, that the permit fees required by the State program are sufficient to cover permit program costs.~~

~~(8) A statement that adequate personnel and funding have been made available to develop, administer, and enforce the program. This statement shall include the following:~~

~~(i) A description in narrative form of the scope, structure, coverage, and processes of the State program.~~

~~(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program, including the information specified in this paragraph. If more than one agency is responsible for administration of a program, the responsibilities of each agency must be delineated, their procedures for coordination must be set forth, and an agency shall be designated as a "lead agency" to facilitate communications between EPA and the other agencies having program responsibility.~~

~~(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit~~

~~complete job descriptions for every employee carrying out the State program.~~

~~(iv) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.~~

~~(v) An estimate of the permit program costs for the first 4 years after approval, and a description of how the State plans to cover those costs.~~

~~(9) A commitment from the State to submit, at least annually to the Administrator, information regarding the State's enforcement activities including, but not limited to, the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.~~

~~(10) A requirement under State law that, if a timely and complete application for a permit renewal is submitted, consistent with § 70.5(a)(2), but the State has failed to issue or deny the renewal permit before the end of the term of the previous permit, then:~~

~~(i) The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 70.6(f) may extend beyond the original permit term until renewal; or~~

~~(ii) All the terms and conditions of the permit including any permit shield that may be granted pursuant to~~

~~§ 70.6(f) shall remain in effect until the renewal permit has been issued or denied.~~

~~(11) A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:~~

~~(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;~~

~~(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date;~~

~~(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application; and~~

~~(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder.~~

~~(12) Provisions consistent with paragraphs (b)(12)(i) and (ii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided that~~

~~the facility provides the Administrator and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time frame for emergencies. The source, permitting authority, and EPA shall attach each such notice to their copy of the relevant permit. The following provisions implement this requirement of an approvable part 70 permit program:~~

~~(i) Trading under permitted emissions caps. The program shall require the permitting authority to include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emission limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under §§ 70.6(a) and (c) of this part, to determine compliance with the cap and with any emissions trading provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or~~

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~~allowing such trading may be established or changed only in a full permit issuance, renewal, or significant permit revision process. The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions units where the permitting authority determines that the emissions are not quantifiable or where it determines that there are no replicable procedures or practical means to enforce the emissions trades.~~

~~(A) Under this paragraph (b)(12)(i), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.~~

~~(B) The permit shield described in § 70.6(f) of this part may extend to terms and conditions that allow such increases and decreases in emissions.~~

~~(ii) Trading under the implementation plan. The program may provide for permitted sources to trade increases and decreases in emissions in the permitted facility, where the applicable implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (b)(12)(ii). This provision is available in those cases where the permit does not already provide for such emissions trading provided the permit identifies which~~

~~permit terms may be replaced with the emissions trading provisions in the implementation plan.~~

~~(A) Under this paragraph (b)(12)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.~~

~~(B) The permit shield described in § 70.6(f) of this part shall not extend to any change made under this paragraph (b)(12)(ii). Compliance with the permit terms that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.~~

~~(13) Provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions. The program may meet this requirement by using procedures that meet the requirements of §§ 70.7(d), (e), (f), (g), and (h) or that are substantially equivalent to those provided therein.~~

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~~(14) If a State allows permittees, without first applying for a permit revision, to make changes that do not result in the source being in violation of any permit term or condition but render the source subject to an applicable requirement to which the source was not previously subject, provisions meeting the requirements of paragraphs (b)(14)(i) through (vii) of this paragraph.~~

~~(i)(A) Each change shall meet all applicable requirements and shall not violate or result in the violation of any existing permit term or condition.~~

~~(B) Each change shall not result in a net increase in the allowable emissions of any regulated air pollutant at the source.~~

~~(C) The change may not be subject to the requirements of title IV of the Act.~~

~~(ii) Sources must provide contemporaneous written notice to the permitting authority of each such change. Such written notice shall describe each such change, the date of the change, any change in emissions, pollutants emitted, and the applicable requirement to which the source becomes subject as a result of the change.~~

~~(iii) The change shall not be eligible for the permit shield under § 70.6(f) of this part until such time as a permit shield may be granted in a subsequent permit revision consistent with the provisions of §§ 70.7(g) or (h).~~

~~(iv) The permittee shall keep a record describing changes made under this paragraph.~~

~~(v) The permittee shall apply for a permit revision by the deadline set forth in § 70.5(a)(1)(ii), except that if the deadline would occur after the date on which a renewal application is due, the State may allow the permittee to incorporate the permit revision request into its renewal application.~~

~~(vi) The permit shall be revised under the relevant procedures of §§ 70.7(e), (f), (g) or (h) for which the change is eligible, except that, notwithstanding provisions in those sections, if the change is processed under minor permit revision or significant permit revision procedures, and the permitting authority or EPA determines that the change was ineligible under this paragraph, then the source shall be liable from the date the change was made for failing to apply for a permit revision before the change was made as required under § 70.7.~~

~~(vii) If eligible for the minor permit revision procedures of § 70.7(g), the following provisions shall apply to changes made under this paragraph.~~

~~(A) The public notice required under § 70.7(g)(3)(ii) shall state that if no germane and nonfrivolous objection is received within 21 days of application, the permitting authority may consider that the change was eligible for processing under this paragraph without further opportunity for public objection. In addition to the provisions of § 70.7(g)(3)(ii), a germane objection is one that objects to~~

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~~the change on the grounds that the source was ineligible under this paragraph.~~

~~(B) The provisions of § 70.7(g)(5)(i) and (ii) prohibiting the source from making the change do not apply.~~

~~(C) Notwithstanding the provisions of § 70.7(g)(6), the source must comply with all applicable requirements from the date the change was made.~~

~~(15) Provisions requiring the permitting authority to implement the requirements of §§ 70.6 and 70.7.~~

~~(c) Partial programs.~~

~~(1) The EPA may approve a partial program that applies to all part 70 sources within a limited geographic area (e.g., a local agency program covering all sources within the agency's jurisdiction). To be approvable, any partial program must, at a minimum, ensure compliance with all of the following applicable requirements, as they apply to the sources covered by the partial program:~~

~~(i) All requirements of title V of the Act and of part 70;~~

~~(ii) All applicable requirements of title IV of the Act and regulations promulgated thereunder which apply to affected sources; and~~

~~(iii) All applicable requirements of title I of the Act, including those established under sections 111 and 112 of the Act.~~

~~(2) Any partial permitting program, such as that of a local air pollution control agency, providing for the~~

~~issuance of permits by a permitting authority other than the State, shall be consistent with all the elements required in paragraphs (b) (1) through (16) of this section.~~

~~(3) Approval of any partial program does not relieve the State from its obligation to submit a whole program or from application of any sanctions for failure to submit a fully approvable whole program.~~

~~(4) Any partial program may obtain interim approval under paragraph (d) of this section if it substantially meets the requirements of this paragraph (c).~~

~~(d) Interim approval.~~

~~(1) If a program (including a partial permit program) submitted under this part substantially meets the requirements of this part, but is not fully approvable, the Administrator may by rule grant the program interim approval.~~

~~(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval), and may not be renewed. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall be fully effective and expire at the end of their fixed term, unless renewed under a part 70 program.~~

~~(3) The EPA may grant interim approval to any program if it meets each of the following minimum requirements:~~

~~(i) Adequate fees. The program must provide for collecting permit fees adequate for it to substantially meet the requirements of § 70.9.~~

~~(ii) Applicable requirements. The program must provide for adequate authority to issue permits that assure compliance with the requirements of paragraph (c)(1) of this section for those major sources covered by the program.~~

~~(iii) Fixed term. The program must provide for fixed permit terms, consistent with paragraph (b)(3)(iii) and (iv) of this section.~~

~~(iv) Public participation. The program must provide for adequate public notice of and an opportunity for public participation on draft permits, reopenings for cause, and revisions as required by § 70.7 of this part, except for:~~

~~(A) Modifications qualifying for minor permit modification procedures under § 70.7(e) of this part as promulgated July 21, 1992; and~~

~~(B) Permit revisions to incorporate changes subject to minor NSR or § 61.15 of part 61 of this chapter processed as minor permit modifications under § 70.7(e) of this part as promulgated July 21, 1992.~~

~~(v) EPA and affected State review. The program must allow EPA an opportunity to review each proposed permit, including permit revisions, and to object to its issuance consistent with § 70.8(c). The program must provide for affected State review consistent with § 70.8(b).~~

~~(vi) Permit issuance. The program must provide that the proposed permit will not be issued if EPA objects to its issuance.~~

~~(vii) Enforcement. The program must contain authority to enforce permits, including the authority to assess penalties against sources that do not comply with their permits or with the requirement to obtain a permit.~~

~~(viii) Operational flexibility. The program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit, consistent with paragraph (b)(12).~~

~~(ix) Streamlined procedures. The program must provide for streamlined procedures for issuing and revising permits and determining expeditiously after receipt of a permit application or application for a permit revision whether such application is complete.~~

~~(x) Permit application. The program submittal must include copies of the permit application and reporting form(s) that the State will use in implementing the interim program.~~

~~(xi) Alternative scenarios. The program submittal must include provisions to insure that alternate scenarios requested by the source are included in the part 70 permit pursuant to § 70.6(a)(9).~~

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~~(e) EPA review of permit program submittals. Within 1 year after receiving a program submittal, the Administrator shall approve or disapprove the program, in whole or in part, by publishing a notice in the FEDERAL REGISTER. Prior to such notice, the Administrator shall provide an opportunity for public comment on such approval or disapproval. Any EPA action disapproving a program, in whole or in part, shall include a statement of the revisions or modifications necessary to obtain full approval. The Administrator shall approve State programs that conform to the requirements of this part.~~

~~(1) Within 60 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete enough to warrant review by EPA for either full, partial, or interim approval. If EPA finds that a State's submission is complete, the 1-year review period (i.e., the period of time allotted for formal EPA review of a proposed State program) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the 1-year review period shall not begin until all the necessary information is received by EPA.~~

~~(2) If the State's submission is materially changed during the 1-year review period, the Administrator may extend the review period for no more than 1 year following receipt of the revised submission.~~

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~~(3) In any notice granting interim or partial approval, the Administrator shall specify the changes or additions that must be made before the program can receive full approval and the conditions for implementation of the program until that time.~~

~~(f) State response to EPA review of program.~~

~~(1) Disapproval. The State shall submit to EPA program revisions or modifications required by the Administrator's action disapproving the program, or any part thereof, within 180 days of receiving notification of the disapproval.~~

~~(2) Interim approval. The State shall submit to EPA changes to the program addressing the deficiencies specified in the interim approval no later than 6 months prior to the expiration of the interim approval.~~

~~(g) Effective date. The effective date of a part 70 program, including any partial or interim program approved under this part, shall be the effective date of approval by the Administrator.~~

~~(h) Individual permit transition. Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program, except that the Administrator will continue to issue phase I acid rain permits and, to the extent provided in regulations promulgated pursuant to title IV of the Act, will issue phase II acid rain permits. After program approval, EPA shall retain jurisdiction over~~

~~any permit (including any general permit) that it has issued unless arrangements have been made with the State to assume responsibility for these permits. Where EPA retains jurisdiction, it will continue to process permit appeals and revision requests, to conduct inspections, and to receive and review monitoring reports. If any permit appeal or revision request is not finally resolved when the federally-issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved. Upon request by a State, the Administrator may delegate authority to implement all or part of a permit issued by EPA, if a part 70 program has been approved for the State. The delegation may include authorization for the State to collect appropriate fees, consistent with § 70.9.~~

~~(i) Program revisions. Either EPA or a State with an approved program may initiate a program revision. Program revision may be necessary when the relevant Federal or State statutes or regulations, including part 70, are revised, modified, or supplemented. The State shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. If the Administrator determines pursuant to § 70.10 that a State is not adequately administering the requirements of this part, or that the State's permit program is inadequate in any other way, the State shall revise the program or its means of implementation to correct the inadequacy.~~

~~(1) If the program or the means of implementing it must be revised, fully adopted program revisions shall be submitted to the Administrator in accordance with the following timeframes, which will commence upon promulgation of revised requirements under title V of the Act or upon a finding by the Administrator of inadequate program administration:~~

~~(i) Within 180 days if no new statutory authority or regulatory revisions are necessary;~~

~~(ii) Within 12 months if no new statutory authority is needed but regulatory revisions are necessary;~~

~~(iii) Within 2 years if new statutory authority is needed; or~~

~~(iv) Notwithstanding paragraphs (i)(1)(i-iii) of this section, any other time period that the Administrator determines is appropriate to allow for program revision.~~

~~(2) Revision of a State program shall be accomplished as follows:~~

~~(i) The State shall submit a modified program description, Attorney General's statement, or such other documents as EPA determines to be necessary.~~

~~(ii) After EPA receives a proposed program revision, it will publish in the FEDERAL REGISTER a public notice summarizing the proposed change and provide a public comment period of at least 30 days.~~

~~(iii) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act.~~

~~(iv) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of nonsubstantial program revisions may be given by a letter from the Administrator to the Governor or a designee.~~

~~(v) The Governor of any State with an approved part 70 program shall notify EPA whenever the Governor proposes to transfer all or part of the program to any other agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until the revision has been approved by the Administrator under this paragraph.~~

~~(3) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as he determines are necessary.~~

~~(j) Savings provision. Any operating permits program developed and submitted to the Administrator for approval prior to [6 months AFTER PUBLICATION OF FINAL Part 70 REVISIONS] must meet the applicable criteria contained in part 70 as in effect on July 21, 1992 to receive EPA~~

~~approval. Notwithstanding the preceding sentence, the Administrator may review portions or the entirety of such program submittals upon request of the permitting authority, and will review the entirety of all later submittals, on the basis of the criteria in part 70 as in effect at the time of the submittal.~~

~~(k) Sharing of information.~~

~~(1) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator, including computer-readable files to the extent practicable. If the information has been submitted to the State under a claim of confidentiality, the State may require the source to submit this information to the Administrator directly. Where the State submits information to the Administrator under a claim of confidentiality, the State shall submit that claim to EPA when providing information to EPA under this section. Any information obtained from a State or part 70 source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter.~~

~~(2) The EPA will furnish to States with approved programs the information in its files that the State needs to implement its approved program. Any such information submitted to EPA under a claim of confidentiality will be subject to the regulations in part 2 of this chapter.~~

~~(1) Administration and enforcement. Any State that fails to adopt a complete, approvable part 70 program, or that EPA determines is not adequately administering or enforcing such a program, shall be subject to certain Federal sanctions as set forth in § 70.10.~~

§ 71.570.5 Permit applications.

(a) Duty to apply. The owner or operator of a source required to obtain a permit under § 71.3 of this part shall submit a timely and complete permit application in accordance with this section.

~~(a) Duty to apply. For each part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.~~

(b) Timely application.

(1) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months or an earlier date after the source becomes subject to the part 71 program. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority of this requirement and given a reasonable time to submit their applications. In no case will this notice be given less than 120 days in advance of the submittal date.

~~(i) A timely application for a source applying for a part 70 permit for the first time is one that is submitted~~

~~within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.~~

~~(2)(ii)~~ For purposes of changes eligible under § ~~71.6(g) of this part~~~~70.4(b)(14)~~, a timely application is one that is submitted not later than 6 months after the notice required under § ~~71.6(g)(ii) of this part~~~~70.4(b)(14)(ii)~~

~~(3)(iii)~~ For purposes of permit revisions other than changes eligible under § ~~71.6(g) of this part~~~~70.4(b)(14)~~, a timely application is one that is submitted by the relevant deadlines set forth in §§ ~~71.7~~~~70.7~~(e), (f), (g), or (h) of this part.

~~(4)~~ For purposes of permit renewal, a timely application is one that is submitted at least 6 months but no longer than 18 months prior to the date of the part 70 or part 71 permit expiration.

~~(iv)~~ For purposes of permit renewal, a timely application is one that is submitted at least 6 months prior to the date of permit expiration, or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months.

~~(5)(v)~~ Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998

for nitrogen oxides or by such other deadlines established under title IV of the Act and the regulations promulgated thereunder.

~~(c)(2)~~ Complete application. ~~The program shall provide criteria and procedures for determining in a timely fashion when applications are complete.~~ To be found complete, an application must provide all information required pursuant to paragraph ~~(f)(e)~~ of this section sufficient to allow the permitting authority to begin processing the application, except that ~~applications~~ an application for a permit revision need supply such information only if it is related to the proposed change. Additionally, an initial applicant must remit payment of any fees owed pursuant to § 71.9 of this part in order for the application to be found complete. The information supplied by the applicant pursuant to paragraph (f) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with paragraph (i) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(3) of this part. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is

necessary to evaluate or take final action on that application, the permitting authority may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b) of this part, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

~~Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. The program shall require that a responsible official certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 70.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 70.7(b), shall be in effect from the date the application is determined or deemed to be complete until~~

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~~the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.~~

~~(d) (3) Confidential information. In a case where a source submits information to the permitting authority under a business confidentiality claim, the permitting authority will follow procedures found at 40 CFR part 2. Pursuant to § 2.301(e) of this chapter, information contained in the permit application regarding emissions data or a standard or limitation is not entitled to confidential treatment. In the case where a source has submitted information to the State under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the Administrator.~~

~~(e) (b) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.~~

~~(f) Standard application form. Part 71 sources shall submit the following information using application forms provided by the permitting authority (or if provided by the~~

permitting authority, an electronic reporting method).

Information as described below for each emissions unit at a part 71 source shall be included in the application. A complete part 71 permit application shall include the following elements:

~~(c) Standard application form and required information. The State program under this part shall provide for a standard application form or forms. Information as described below for each emissions unit at a part 70 source shall be included in the application. The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9. No activity or emissions unit of a source may be exempted when determining whether a source is major. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:~~

- (1) Identifying information, including company name and address (or plant name and address if different from the

company name), owner's name and agent, and telephone
~~numbers~~~~number~~ and names of plant site
~~managers/contacts.~~~~manager/contact.~~

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under paragraph (g) of this section. Fugitive emissions shall be included in the permit application in the same manner as stack emissions for each emissions unit, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. Moreover, ~~this paragraph (e).~~
~~The permitting authority shall require additional~~
 information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9 of this part must be provided. ~~approved pursuant to § 70.9(b).~~

(ii) Identification and description of all points of emissions described in paragraph (f)(3)(i) ~~(e)(3)(i)~~ of this

section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in ~~tons/year~~ and in such ~~additional~~ terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or ~~activities, including brief descriptions of any appropriate operation and maintenance procedures and quality assurance procedures.~~

(vi) Limitations on **source** operation affecting emissions or any work practice standards, where applicable, for all regulated ~~air pollutants at the part 71~~ ~~source pollutants at the part 70 source.~~

(vii) Other information required by any applicable requirement ~~(including, but not limited to, (including information related to~~ stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in ~~paragraphs (f) (3) (i) items (i) through (vii) of this~~ ~~section~~ ~~above~~ is based

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements, and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(8) of this part or to define permit terms and conditions implementing § 71.6(a)(9) or § 71.6(p) of this part. ~~70.6(a)(9) or to define permit terms and conditions implementing § 70.4(b)(12) or § 70.6(a)(10) of this part.~~

(8) Identification of those emissions units eligible for emissions trading under § 71.6(a)(9) of this part ~~70.6(a)(10)~~ and those emissions units at which changes may be processed under de minimis permit revision procedures contained in § 71.7(f) ~~70.7(f)~~ of this part.

(9) A compliance plan for all part ~~71~~70 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable

sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports ~~no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation, unless more frequent submittals are required in the applicable requirement or by the permitting authority violation.~~

(v) For affected sources applying for part 71 permits, the compliance plan content requirements specified in this paragraph must be met for all applicable requirements, including the applicable requirements of title IV. For permit applications required under the acid rain program, the compliance plan content requirements of 40 CFR part 72, subpart D must be met.

~~(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and~~

~~method(s) the source will use to achieve compliance with the acid rain emissions limitations.~~

(10) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph ~~(1)(d)~~ of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for ~~annual submissions~~ ~~submission~~ of compliance certifications during the permit term, ~~or for more frequent submissions to be submitted no less frequently than annually, or more frequently~~ if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(11) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

~~(12) Temporary sources requesting a single permit for multiple sites must also provide in the permit application~~

ambient air quality standard and increment and visibility analyses as required under part C of title I of the Act.

(g) Insignificant activities and emissions levels.

The following types of insignificant activities and emissions levels are exempt from the requirements of paragraph (f) of this section. Notwithstanding the preceding sentence, no activity or emission levels shall be exempt from the requirements of paragraph (f) of this section if the information omitted from the application is needed to determine the applicability of or to impose any applicable requirement, to determine whether a source is major, to determine whether a source is subject to the requirement to obtain a part 71 permit, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(1) Insignificant activities. Information concerning the following activities need not be provided in the application:

(i) Mobile sources;

(ii) Air-conditioning units used for human comfort that do not use a class I or class II ozone depleting substance and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iii) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(iv) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(v) Noncommercial food preparation;

(vi) Consumer use of office equipment and products;

(vii) Janitorial services and consumer use of janitorial products; and

(viii) Internal combustion engines used for landscaping purposes.

(2) Insignificant emissions levels. Emissions meeting the criteria in paragraph (i) or (ii) below need not be included in the application consistent with paragraph (f) of this section, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(i) Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP). Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 1 ton/yr, except in extreme ozone nonattainment areas, where potential to emit may not exceed 1,000 pounds (lb) per year. Aggregate emissions of

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any regulated air pollutant, excluding HAP, from all emission units shall not exceed potential to emit of 10 tons/yr, except in extreme ozone nonattainment areas, where potential to emit may not exceed 5 tons/yr.

(ii) Emission criteria for HAP. Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less. Aggregate emissions of all HAP from all emission units shall not exceed potential to emit of 5 tons/yr or the section 112(g) de minimis levels, whichever is less.

(h) Application for coverage under a general permit. Part 71 sources that qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with this section. The permitting authority may provide for applications for general permits which deviate from the requirements of this section, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and assure compliance with, the general permit.

(i) Certification by a responsible official. ~~(d)~~ Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other

certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ ~~71.670.6~~ Permit content.

(a) Standard permit requirements. Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part ~~71.70~~ source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant permit revision process, and the permitting authority ~~significant revision process, and the State~~ elects to use such process, any permit containing such equivalency

determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(iv) Emission units and part 71 sources.

(A) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(B) For any nonmajor source subject to the part 71 program, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that caused the source to be subject to the part 71 program.

(2) Permit duration. The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years. The permit shall state when the source's application for renewal must be submitted to the permitting authority consistent with § 71.5 of this part.

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~~(3) Monitoring and related recordkeeping and reporting requirements.~~

~~(i) Each permit shall contain the following requirements with respect to monitoring:~~

~~(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;~~

~~(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and~~

~~(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.~~

~~(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require the following:~~

~~(A) Records of required monitoring information that include the following:~~

~~(1) The date, place as defined in the permit, and time of sampling or measurements;~~

~~(2) The date(s) analyses were performed;~~

~~(3) The company or entity that performed the analyses;~~

~~(4) The analytical techniques or methods used;~~

~~(5) The results of such analyses; and~~

~~(6) The operating conditions as existing at the time of sampling or measurement including identification of any alternative scenarios provided for in the permit;~~

~~(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.~~

~~(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:~~

~~(A) Submittal of reports of any required monitoring at least every 6 months. Monitoring reports must indicate what alternative scenarios, if any, applied during each monitored period. All instances of deviations from permit requirements must be clearly identified in such reports.~~

~~All required reports must be certified by a responsible official consistent with § 70.5(d).~~

~~(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in its part 70 program regulations for each situation which is not already defined in the underlying applicable requirement, and do so in relation to the degree and type of deviation likely to occur and the applicable requirements. Upset conditions shall be defined in the permit.~~

~~(3)(4)~~ For affected sources, a permit condition prohibiting any affected unit from emitting ~~sulfur dioxide~~SO2, in excess of any allowances that the affected unit lawfully holds under title IV of the Act or the regulations promulgated thereunder.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the unit. The unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act.

~~(4)-(5)~~ A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any ~~portion~~ portions of the permit.

~~(5)-(6)~~ Provisions stating the following:

(i) The ~~source~~ permittee must comply with all conditions of the part ~~7170~~ permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, ~~or modification or revision~~; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense.
It shall not be a defense for a ~~source~~ permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the ~~source~~ permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, including copies of records required to be kept by the permit. The source may assert a claim of confidentiality consistent with section 114(c) of the Act and 40 CFR part 2 with respect to any such requested information. ~~permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.~~

(vi) A schedule of compliance does not sanction noncompliance with the applicable requirement on which it is based.

~~(6)(7)~~ A provision to ensure that a part 71.70 source pays fees to the permitting authority consistent with the fee schedule in § 71.9 of this part. ~~approved pursuant to § 70.9.~~

~~(7)(8)~~ Emissions trading. A provision stating that no permit revision shall be required, under any economic incentives, marketable permits, emissions trading, ~~or~~ and other similar programs or processes approved in an implementation plan or other applicable requirement

authorizing such changes to be provided for in the permit and where the permit provides for such changes.

~~(8)~~(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application ~~as~~ and approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating. Provided that each of the alternative scenarios available for a particular unit is monitored in a way that yields objective, contemporaneous measurement and recordation of relevant emissions or parameters and that the means of measurement are sufficiently different for each of the scenarios that the contemporaneous record reveals the scenario under which the source was operating when the record was made, no further notice to the permitting authority is required. Otherwise, the permit shall require that when any change is made between alternative scenarios, the permittee at the beginning of the following week shall place in regular mail to the permitting authority notice of such change(s) between scenarios, which could consist of a copy of the relevant portion of the on-site log indicating the scenario(s) under which the source operated during the previous week;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

~~(9)-(10)~~ Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of any emissions trade. Such terms and conditions:

(i) Shall include all terms required under ~~paragraphs (a) and (c) of this section to ensure compliance; §§ 70.6(a) and (c) of this part to determine compliance;~~

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and ~~the~~ requirements of this part.

(b) Federally-enforceable requirements. ~~(1)~~ All terms and conditions in a part ~~71-70~~ permit, including any provisions designed to limit a source's potential to emit, ~~shall be~~ enforceable by the Administrator and citizens under the Act.

~~(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this section, other than those contained in this paragraph (b).~~

(c) Compliance requirements. All part 71 permits shall contain testing, monitoring, reporting, recordkeeping, and compliance certification requirements sufficient to assure compliance with the terms and conditions of the permit consistent with the following provisions of this section. Any document (including reports) required to be submitted by a part 71 permit shall contain a certification by a responsible official that meets the requirements of § 71.5(i) of this part.

~~(c) Compliance requirements.~~ All part 70 permits shall contain the following elements with respect to compliance:

~~(1) Consistent with paragraph (a)(3) of this section, testing, monitoring, recordkeeping, reporting, and compliance certification requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required to be submitted by a part 70 permit shall contain a certification by a~~

~~responsible official that meets the requirements of § 70.5(d).~~

~~(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:~~

~~(i) Enter upon the permittee's premises where a part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;~~

~~(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;~~

~~(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and~~

~~(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.~~

~~(3) A schedule of compliance consistent with § 70.5(e)(9).~~

~~(4) Progress reports consistent with an applicable schedule of compliance and § 70.5(e)(9) to be submitted at least semiannually, or at a more frequent period if~~

~~specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:~~

~~(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and~~

~~(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.~~

~~(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:~~

~~(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;~~

~~(ii) In accordance with § 70.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;~~

~~(iii) A requirement that the compliance certification include the following:~~

~~(A) The identification of each term or condition of the permit that is the basis of the certification;~~

~~(B) The compliance status;~~

~~(C) Whether compliance was continuous or intermittent;~~

~~(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and~~

~~(E) Such other facts as the permitting authority may require to determine the compliance status of the source;~~

~~(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and~~

~~(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.~~

~~(6) Such other provisions as the permitting authority may require.~~

(d) Monitoring requirements. Each permit shall contain the following requirements with respect to monitoring:

(1) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this section. Such monitoring requirements

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shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (d)(2) of this section; and

(3) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(e) Recordkeeping requirements. Each permit shall contain the following requirements with respect to recordkeeping:

(1) All applicable recordkeeping requirements;

(2) Where applicable, a requirement to maintain records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses; and

(vi) The operating conditions as existing at the time of sampling or measurement; and

(3) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement,

report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(f) Reporting and notification requirements. Each permit shall contain the following requirements with respect to reporting and notification:

(1) All applicable reporting requirements.

(2) Submittal of reports of any required monitoring at least every 6 months or more frequently if required by the applicable requirement or by the permitting authority. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(i) of this part.

(3) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(i) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made within 24 hours of the occurrence.

(ii) For emissions of any regulated air pollutant, excluding those listed in paragraph (f)(3)(i) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(iii) A permit may contain a more stringent reporting requirement than required by paragraphs (f)(3)(i) and (ii) of this section.

If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (f)(3)(i)-(iii) of this section. A written notice, certified consistent with § 71.5(i) of this part, must be submitted within 10 working days of the occurrence.

All deviations reported under paragraph (f)(3) of this section must also be identified in the 6 month report required under paragraph (f)(2) of this section.

(4) For purposes of paragraph (f)(3) of this section, deviation means any condition determined by observation, data from an enhanced monitoring protocol, any other monitoring protocol, or any other monitoring which is required by the permit that can be used to determine

compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(i) A condition where emissions exceed an emission limitation or standard;

(ii) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(iii) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(g) Compliance certification requirements. Each permit shall contain the following requirements with respect to compliance certifications with the terms and conditions contained in the permit, including emission limitations, standards, or work practices:

(1) The frequency (not less than annually or more frequently if specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(2) In accordance with paragraph (d) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(3) A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (d) of this section;

(v) Such other facts as the permitting authority may require to determine the compliance status of the source; and

(vi) A requirement that all compliance certifications be submitted to the permitting authority.

(4) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(h) Inspection and entry requirements. Each permit shall contain inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(1) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(i) Compliance schedule. Each permit shall contain a schedule of compliance consistent with § 71.5(f)(9) of this part.

(j) Progress reports. Each permit shall contain a requirement that the permittee submit progress reports consistent with an applicable schedule of compliance and § 71.5(f)(9) of this part to be submitted at least semiannually, or more frequently if required by the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates

when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(k) Other provisions. Each permit shall contain such other provisions as the permitting authority may require.

(1)(a) General permits.

(1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11 of this part, ~~70.7(k)~~ issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part ~~71.70~~ permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the ~~terms and conditions~~ ~~conditions and terms~~ of the general permit. Notwithstanding the shield provisions of paragraph (n)(f) of this section, the source shall be subject to enforcement action for operation without a part ~~71.70~~ permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Act.

(2) Without repeating the public participation procedures required under § 71.11 of this part, the permitting authority may grant a source's request for

authorization to operate under a general permit, and such a grant shall be a final permit action for purposes of judicial review.

~~(2) Part 70 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 70 permit consistent with § 70.5. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 70.5, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 70.7(k), the permitting authority may grant a source's request for authorization to operate under a general permit, and such a grant shall be a final permit action for purposes of judicial review.~~

(3) The permitting authority shall provide timely notice to the public of any authorization given to a source to operate under the terms of a general permit. Such notice may be made on a monthly, summarized basis covering all sources receiving authorization since the time of the last notice.

~~(m)~~ ~~(e)~~ Temporary sources. The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple

temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall contain all of the terms and conditions required by this section as well as the following terms and conditions: ~~include the following:~~

- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and
- (3) Conditions that assure compliance with all other provisions of this section.

~~(n)-(f)~~ Permit shield.

(1) Except as provided in this part, the permitting authority may expressly include in a part 7170 permit a provision stating that compliance with the terms and conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

- (i) Such applicable requirements are included and are specifically identified in the permit; or
- (ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to

the source, and the permit includes the determination or a concise summary thereof.

(2) A part ~~7170~~ permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part ~~7170~~ permit shall alter or affect the following:

(i) The provisions of sections 112(r)(9) and 303 of the Act (emergency orders), including the authority of the Administrator under those sections;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

~~(c)(9)~~ Emergency provision.

(1) Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly

designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph ~~(c)(3)~~ (3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph ~~(f)(3)(a)(3)(iv)(B)~~ (f)(3) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

(p) Operational flexibility. A permitted facility may make changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days. The source and the permitting authority shall attach each such notice to their copy of the relevant permit.

(1) Trading under permitted emissions cap. The permitting authority shall include in a permit an emissions cap, pursuant to a request submitted by the applicant, consistent with any specific emission limits or restrictions otherwise required in the permit by any applicable requirements, and permit terms and conditions for emissions trading solely for the purposes of complying with that cap, provided that the permitting authority finds that the request contains adequate terms and conditions, including all terms required under § 71.6 of this part, to determine compliance with the cap and with any emissions trading

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provisions. The permit shall also contain terms and conditions to assure compliance with all applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions cap is enforceable and trades pursuant to it are quantifiable and enforceable. Any permit terms and conditions establishing such a cap or allowing such trading may be established or changed only in a full permit issuance, renewal, or significant permit revision procedures. The permitting authority shall not be required to include in the cap or emissions trading provisions any emissions unit where the permitting authority determines that the emissions are not quantifiable or where it determines that there are no replicable procedures or practical means to enforce the emissions trades.

(i) Under paragraph (p)(1) of this section, the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield described in § 71.6(n) of this part may extend to terms and conditions that allow such increases and decreases in emissions.

(2) Trading under the implementation plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the applicable implementation

plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in paragraph (p) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading provided the permit identifies which permit terms may be replaced with the emission trading provisions in the implementation plan.

(i) Under paragraph (p)(2) of this section, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(ii) The permit shield described in § 71.6(n) of this part shall not extend to any change made under paragraph (p) of this section. Compliance with the permit terms that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

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(q) The permitting authority may allow permittees, without first applying for a permit revision, to make changes that do not result in the source being in violation of any permit term or condition but render the source subject to an applicable requirement to which the source was not previously subject, provided the requirements of paragraphs (q)(1) through (8) of this section are met.

(1) Each change shall:

(i) Meet all applicable requirements and shall not violate or result in the violation of any existing permit term or condition; and

(ii) Not result in a net increase in the allowable emissions of any regulated pollutant at the source.

(2) The change may not be subject to the requirements of title IV of the Act.

(3) Sources must provide contemporaneous written notice to the permitting authority of each such change. Such written notice shall describe each such change, the date of the change, any change in emissions, pollutants emitted, and the applicable requirement to which the source becomes subject as a result of the change.

(4) The change shall not be eligible for the permit shield under § 71.6(n) of this part until such time as a permit shield may be granted in a subsequent permit revision consistent with the provisions of § 71.7(g) or 71.11 of this part.

(5) The permittee shall keep a record describing changes made under this paragraph.

(6) The permittee shall apply for a permit revision by the deadline set forth in § 71.5(b)(2) of this part, except that if the deadline would occur after the date on which a renewal application is due, the permitting authority may allow the permittee to incorporate the permit revision request in its renewal application.

(7) The permit shall be revised under the relevant procedures of § 71.7(e), (f), (g), or 71.11 of this part for which the change is eligible, except that, notwithstanding provisions in those sections, if the change is subsequently processed under minor permit revision or significant permit revision procedures, and the permitting authority or EPA (in the case of a program delegated pursuant to § 71.10 of this part) determines that the change was ineligible under this paragraph, then the source shall be liable from the date the change was made for failure to have applied for a permit revision before the change was made as required under § 71.7 of this part.

(8) If eligible for the minor permit revision procedures of § 71.7(g) of this part, the following provisions shall apply to changes made under this paragraph:

(i) The public notice required under § 71.7(g)(3)(ii) of this part shall state that if no germane and nonfrivolous objection is received within 21 days of application, the permitting authority may consider that the change was

eligible for processing under this paragraph without further opportunity for public objection. In addition to the provisions of § 71.7(g)(3)(ii) of this part, a germane objection is one that objects to the change on the grounds that the source was ineligible under this paragraph.

(ii) The provisions of §§ 71.7(g)(5)(i) and (ii) of this part prohibiting the source from making the change do not apply.

(iii) Notwithstanding the provisions of § 71.7(g)(7) of this part, the source must comply with all applicable requirements from the date the change was made.

~~§ 71.770-7~~ **Permit review, issuance, renewal, reopenings, and revisions.**

(a) Action on application.

(1) A permit, permit revision, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit revision, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(1) of this part ~~70.6(d)~~;

(ii) The permitting authority has complied with the applicable requirements for public participation under this section or § 71.11 of this part, if applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § ~~71.8(a)~~ of this part; ~~70.8(b)~~;

(iv) Except as provided in paragraph ~~(a)(6)~~ ~~(a)(7)~~ of this section, the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) ~~In the case of a program delegated pursuant to § 71.10 of this part, except~~ ~~Except~~ for revisions qualifying for de minimis permit revision procedures under paragraph (f) of this section or for administrative ~~amendment~~ procedures under paragraphs ~~(e)(1)(i)-(iv)~~ of this section, the Administrator has received a copy of the proposed permit and any notice required under § 71.10(d) of this part, ~~(e)(1)(i-v)~~ of this section, the Administrator has received a copy of the proposed permit and any notices required under ~~§§ 70.8(a) and 70.8(b)~~, and has not objected to the issuance of the permit under § 71.10(g) of this part ~~issuance of the permit under § 70.8(e)~~ within the time period specified therein.

(2) Except as provided under the initial transition plan provided under § 71.4(i) of this part or under regulations promulgated under title IV or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit ~~for~~ under ~~§ 70.4(b)(11)~~ or under regulations promulgated under

~~title IV or title V of the Act for the permitting of affected sources under the acid rain program, the program shall provide that the permitting authority take final action on each permit application (including a request for permit revision or renewal) within 18 months, or such lesser time approved by the Administrator, after receiving a complete application. Notwithstanding the preceding sentence, However, the permitting authority shall take final action within 12 months after receipt of a complete on any complete permit application containing an early reductions demonstration. reduction demonstration under section 112(i)(5) of the Act and regulations promulgated thereunder, and within the time period specified under paragraph (g)(5)(v) of this section for a minor permit revision. Final action may be delayed where an applicant fails to provide additional information in a timely manner as requested by the permitting authority under § 71.5(c) of this part.~~

~~(3) The program shall also contain reasonable procedures to ensure priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.~~

(3)(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an

application, the application shall be deemed complete.

Notwithstanding the above, for revisions that qualify for and are processed through the procedures of paragraph (e), (f), or (g) of this section, the permitting authority need not undertake a completeness determination before commencing revision procedures. ~~For revisions that qualify for and are processed through the procedures of paragraphs (e), (f), or (g) of this section, the State program need not require a completeness determination.~~

~~(4)~~(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to ~~any EPA~~ and ~~to any other~~ person who requests it, and to the EPA, in the case of a program delegated pursuant to § 71.10 of this part. ~~it.~~

~~(5)~~(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

~~(6)~~(7) Any new applicable requirement approved or promulgated by EPA that becomes applicable to a source prior to issuance of a draft permit (whether during issuance or renewal) shall be included in the draft permit. If any new applicable requirement becomes applicable after issuance of a draft permit, and the requirement is not reflected in the draft permit, the permit may be issued without incorporating

the new applicable requirement, provided that the permitting authority institutes proceedings no later than the date of permit issuance to reopen the permit consistent with paragraph (i) of this section to incorporate the new applicable requirement and that the permit contains a statement that it is being reopened for this purpose.

(b) Requirement to apply for a permit. Except as provided in the following sentence and paragraphs (e), (f), and (g) of this section, no part 70 ~~or part 71~~ source may operate after the time that it is required to submit a timely and complete application under an approved permit program ~~or this part~~, except in compliance with a permit issued under a part 70 program ~~or this part~~. ~~If a part 70 or part 71~~ ~~The program shall provide that, if a part 70~~ source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part ~~71~~70 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph ~~(a) (3)~~ of this section, and as required by § 71.5(c) of this ~~part, (a) (4) of this section, and as required by~~ § 70.5(a)(2), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) Permit renewal and expiration.~~(1) The program shall provide that:~~

~~(1)(i)~~ Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, requirements, including those for public participation, affected State and EPA review, and EPA review, in the case of a program delegated pursuant to § 71.10 of this part that apply to initial permit issuance, and

~~(2)(ii)~~ Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and §§ 71.5(b) and 71.5(c) of this part. ~~§ 70.5(a)(1)(iii).~~

(3) If a timely and complete application for a permit renewal is submitted by the permittee consistent with §§ 71.5(b) and 71.5(c) of this part, but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or part 71 permit, then all the terms and conditions of the permit, including any permit shield, shall remain in effect until the permitting authority issues or denies the renewal permit. In the case of a program delegated pursuant to § 71.10 of this part, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

~~(2) If the permitting authority fails to act in a timely way on a permit renewal, the EPA may include its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.~~

(d) Permit revisions. Changes requiring revision of a part 70 ~~or part 71~~ permit are those that could not be operated without violating an existing permit term or rendering the source subject to an applicable requirement to which the source has not been previously subject. ~~The State shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions. The State may meet this obligation by adopting the procedures set forth in paragraphs (e), (f), (g), and (h) of this section and in § 70.4(b)(14) or ones substantially equivalent. The State may also develop different procedures for different types of revisions depending on the significance and complexity of the requested revision, but EPA will not approve a part 70 program that has permit revision procedures that provide for less permitting authority, EPA, or affected State review or public participation than is provided for in this part. A permit revision for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.~~

(e) Administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

- (i) Corrects typographical errors;
- (ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change;
- (iii) Requires more frequent testing, monitoring, recordkeeping, or reporting;
- (iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

~~(v) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (e)(1)(i) through (iv) of this section;~~

(v) In the case of a program delegated pursuant to § 71.10 of this part, incorporates the requirements of a minor new source review (NSR)

~~(vi) Incorporates the requirements of a minor NSR or major NSR preconstruction permit or decision or a section 112(g) determination, provided that such permit or determination was issued in accordance with the procedural requirements substantially equivalent to the requirements of paragraph (e)(4) of this section and contains compliance~~

requirements substantially equivalent to those required under § ~~71.6~~~~70.6~~ of this part.

~~(vi)~~~~(vii)~~ Notwithstanding the provisions of paragraph (e)(1) ~~(v)~~~~(vi)~~ of this section, incorporates a standard promulgated after permit issuance pursuant to section 112 of the Act.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act.

(3) Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(i)-(iv) of this part~~§ 70.7(e)(i)-(v)~~. Changes m~~aking~~ the criteria set forth in paragraphs (e)(1) ~~(i)-(iv)~~~~(i-v)~~ of this section may be made to a permit using the following procedures:

(i) The source shall submit to the permitting authority an application containing a proposed addendum to the source's part 70 ~~or part 71~~ permit. The application shall demonstrate how the proposed change meets one of the criteria for administrative amendments set forth in paragraphs (e)(1) ~~(i)-(iv)~~~~(i-v)~~ of this section, and include certification by the responsible official consistent with § ~~71.5(i)~~~~70.5(d)~~ of this part that the change is eligible for administrative amendment procedures. The addendum shall:

(A) Identify the terms of the existing part 70 ~~or part 71~~ permit that it proposes to change;

(B) Propose new permit terms consistent with the provisions of this part applicable to the change;

(C) Designate the addendum as having been processed under the procedures of this paragraph; and

(D) Specify that the addendum will be effective 60 days from the date of permitting authority receipt unless the permitting authority disapproves the change within such period.

(ii) The permitting authority may allow the source to implement the requested change immediately upon making all required submittals, including the proposed addendum.

(iii) The proposed addendum ~~will~~ may become effective 60 days after the permitting authority receives the submittal, provided the permitting authority has not disapproved the request in writing before the end of the 60-day period. The permitting authority shall record the change by attaching a copy of the addendum to the existing part 70 ~~or part 71~~ permit and, ~~in the case of a program delegated pursuant to § 71.10 of this part,~~ provide the Administrator with a copy of the addendum.

(iv) If the permitting authority disapproves the change, it shall notify the source of its reasons for disapproving the change in a timely manner. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. The permitting authority may approve a permit addendum for an

administrative permit amendment that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the request eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements of the Act apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The process in paragraph (e)(3) of this section may also be used for changes initiated by the permitting authority that meet the criteria under paragraphs (e)(1)(i), (ii), and (iv) of this section. For such changes, the permitting authority shall notify the source of the proposed change and its effective date, and shall attach a copy of the change to the existing permit. On the effective date of the proposed change, the source shall comply with the provisions of the proposed change.

(vi) The permit shield under § 71.6(n) of this part may not extend to administrative amendments processed under paragraph (e)(3) of this section. ~~70.6(f) of this~~

~~part may not extend to administrative amendments processed under this paragraph (e)(3).~~

(4) Administrative amendment procedures for changes meeting the criteria under § 71.7(e)(1)(v) of this part. In the case of a program delegated pursuant to § 71.10 of this part, a change meeting the criteria of paragraph (e)(1)(v) of this section may be made to a permit using the procedures in the following paragraphs (e)(4)(i)-(iv) of this section. ~~70.7(e)(1)(vi).~~ A change meeting the criteria of ~~§ 70.7(e)(1)(vi)~~ may be made to a permit using the ~~procedures in the following paragraphs (e)(4)(i-v) of this section.~~

(i) An applicant shall submit prior to construction (including modification), a permit application to the permitting authority meeting the requirements for applications of minor NSR, major NSR, section 112(g) determinations under the Act, and paragraph (e)(3)(i) of this section. The application must:

(A) Specify draft permit terms governing construction of any proposed new or modified emissions unit or combination thereof, including all applicable requirements;

(B) Inform the permitting authority that the source is requesting to revise the part 70 or part 71 permit using the process under this paragraph;

(C) Include a proposed addendum to the part 70 or part 71 permit that identifies the terms of the existing part 70 or part 71 permit that will change and the draft

terms and conditions which will govern operation of the new or modified unit consistent with part ~~71.70~~ (including compliance requirements consistent with ~~§ 71.6 of this part~~ ~~§ 70.6~~) and any notice requirements contained in paragraph (e)(4)(ii) of this section, and that incorporates relevant terms and conditions from the proposed minor NSR or major NSR or section 112(g) action; and

(D) Include an affidavit signed by a responsible official stating that the source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

(ii) For any minor ~~NSR or major NSR or section 112(g) action and part 71~~ ~~NSR, major NSR, or section 112(g) action and part 70~~ permit addendum proposed for approval under this paragraph (e)(4), the permitting authority shall:

(A) Provide a comment period for the public and affected States prior to construction of the change of at least 30 days or, in the case of minor NSR, as many days as required by the ~~applicable~~ ~~approved~~ implementation plan ~~approved~~ as of November 15, 1993, but not less than 15 days. Where a minor NSR action includes a netting transaction involving either a single emissions increase above applicable title I modification significance levels or a sum of increases above applicable major source thresholds, a public comment period of at least 30 days must be provided for a change to qualify for processing under this paragraph;

(B) Provide notice and a copy of the application filed pursuant to paragraph (e)(4)(i) of this section to EPA by the beginning of the public comment period;

(C) Issue a minor NSR or major NSR permit or determination or issue a section 112(g) determination and an addendum to the part 70 ~~or part 71~~ permit for the operation of the change if it determines the requirements of the applicable minor NSR, major NSR, or section 112(g) review program and part ~~71-70~~ have been met; and

(D) Provide an opportunity for EPA objection consistent with the provisions of § ~~71.10(g) of this part, 70.8(e),~~ starting either upon receipt of the notice described under paragraphs (e)(4)(ii)(D)(1) or (2) of this section as applicable or from the date the permitting authority made its final minor NSR, major NSR, or section 112(g) determination, whichever is later.

(1) For changes approved by the permitting authority under major NSR or section 112(g) review, the source shall provide a notice to EPA and the permitting authority which must be postmarked at least 21 days before the anticipated date of initial startup of the new or modified source. For such changes, the source may commence operation at the end of the 21-day period unless EPA objects in writing to the proposed change within the 21-day period. Upon notification of such objection, the source may not operate such a change and must comply with the terms and conditions of the permit that it sought to change.

(2) For changes approved by the permitting authority under minor NSR, the source shall notify EPA and the permitting authority of the anticipated date for startup of the change. The source may commence operation of such a change upon postmark of such notice.

(iii) The proposed part ~~7170~~ permit addendum may become effective 45 days after EPA receives notice under paragraph (e)(4)(ii)(D) of this section or 45 days from the date the permitting authority makes its final preconstruction determination, whichever is later, provided that by the end of such period EPA has not objected to the change.

(iv) If EPA objects to the change, EPA shall notify the permitting authority and the source of its reasons for objecting to the change. Upon receiving such notice, the source shall comply with the terms of the permit that it had proposed to change, and thereafter the proposed addendum shall not take effect. If, subsequent to source implementation of the requested change, EPA objects to the change, the source shall be liable for having operated in violation of its existing permit from the time it implemented the change. Notwithstanding the preceding sentence, the permitting authority may revise a proposed addendum making an administrative permit amendment in response to an EPA objection without rendering the source liable for violating its existing permit if the permitting authority's revisions are not necessary to make the change

eligible for administrative amendment procedures and do not change the applicant's proposed determination of which applicable requirements apply to the source as a result of the requested change and if the source demonstrates to the satisfaction of the permitting authority its compliance with the applicable requirement to which it is subject as a result of the change ~~and the source's proposed permit revision~~. However, the source would remain liable for any violations of the requirements which are applicable as a result of the change and the source's proposed permit revision.

(v) The permitting authority may provide a permit shield consistent with the provisions of ~~§ 71.6(n) of this part. § 70.6(f).~~

(5) Administrative permit amendment procedures for changes meeting the criteria under § 71.7(e)(1)(vi) of this part~~§ 70.7(e)(1)(vii)~~. Changes meeting the criteria set forth in paragraph ~~(e)(1)(vi)-(e)(1)(vii)~~ of this section may be made to a permit using the following procedures:

(i) After receipt of the initial notification required under the section 112 standard, the permitting authority shall prepare a proposed addendum to the source's part 70 ~~or part 71~~ permit. The addendum shall contain the following:

(A) A statement that the section 112 standard is an applicable requirement for the permitted source;

(B) A schedule of compliance, consistent with ~~§ 71.5 of this part; § 70.5(e)(9).~~

(C) A requirement to submit any implementation plan or report required under the standard;

(D) A requirement to apply for a minor permit revision by the deadline for the compliance statement, unless the source is exempted from this requirement by the rulemaking promulgating the applicable section 112 standard. If the source is utilizing an alternative requiring case-by-case approval, such as emissions averaging, the source shall apply for a significant permit revision in lieu of the minor permit revision required in the preceding sentence. If the compliance statement deadline is within 6 months of the end of the permit term, the source may incorporate its application for the revisions into its application for permit renewal, in lieu of applying for revisions by the compliance statement deadline;

(E) Any other provisions required to be incorporated into the permit by the applicable section 112 standard.

(ii) The permitting authority shall make available for public review and comment for at least 30 days a list of sources whose permits are reopened under this paragraph. Notice of the availability of the list shall be given by such time as to assure that any additional administrative amendments for sources subject to the standard and not on the list take effect within 18 months after promulgation of the section 112 standard. If after considering public comment, the permitting authority determines that permits for other sources must be reopened to incorporate

section 112 standards, it shall notify such sources of its intent to do so at least 30 days before reopening the permit, and may use the provisions of this paragraph.

(iii) The proposed addendum shall become effective not later than 18 months after promulgation of the section 112 standard. The permitting authority shall attach a copy of the addendum to the existing part 70 ~~or part 71 permit and shall, in the case of a program delegated pursuant to § 71.10 of this part, permit and shall~~ provide the Administrator with a copy.

(iv) The permitting authority shall, as soon as practicable, place all information required to be submitted by the permit with respect to the section 112 standard in a docket accessible to the public.

(v) The permit shield under § ~~71.6(n)~~ ~~70.6(f)~~ of this part may not extend to administrative amendments processed under ~~this paragraph (e)(5) of this section.~~

(f) De minimis permit revisions.

(1) A de minimis permit revision may be made by the permitting authority to a part 70 ~~or part 71~~ permit provided that the permit contains a term or condition authorizing the source to make use of de minimis permit revision procedures for qualifying changes at the applicable unit and such term or condition was established during permit issuance or renewal, or under permit revision procedures contained in ~~§ 71.11 of this part~~ ~~paragraph (h) of this section,~~ and provided the action taken meets the criteria and procedures

specified in ~~paragraph (f) of this section.~~

~~paragraph (f).~~

(2) Criteria. For the change to be considered de minimis and eligible for de minimis permit revision procedures, the conditions in paragraph (f)(2)(i) of this section and the applicable conditions and limits in paragraphs (f)(2)(ii) and (iii) of this section must be met. The limits in paragraphs (f)(2)(ii) and (iii) of this section are on a single pollutant basis except where a combination of hazardous air pollutants is indicated.

(i) Conditions limiting de minimis changes.

(A) The source must not be in violation of the part 70 ~~or part 71~~ permit terms and conditions it seeks to change.

(B) In the case of existing units, the need for a permit revision must result from a physical or operational change. ((ADD TO END OF SENTENCE: , unless the permit revision solely involves monitoring or recordkeeping requirements.))

(C) ((ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,)) The change may not involve a permit term or condition established to limit emissions which is federally enforceable only as a part 70 ~~or part 71~~ permit term or condition.

(D) De minimis emission threshold levels cannot be met by offsetting emission increases with emission decreases at the same source.

((ADD NEW PARAGRAPHS: (E) The change may not involve a change to monitoring or recordkeeping requirements unless, prior to the source's submission of a de minimis permit revision application, the permitting authority affirmatively determines that the monitoring or recordkeeping change has been demonstrated by the source:

(1) To not affect the capability of the method to measure emission results as precisely, accurately, and timely as is provided by the existing monitoring or recordkeeping method;

(2) To only affect a single source or facility; and

(3) To not constitute a new or alternative monitoring method or represent a new operating level of the method.

(F) The criteria for all demonstrations required under paragraph (f)(2)(i)(E) of this section shall include, in addition to the requirements of paragraph (f)(3)(C) of this section, an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D, and related appendices' procedures of 40 CFR part 64.))

(ii) Unit-based change limits. For a change at any emissions unit to qualify as a unit-based de minimis permit revision, the total emissions of an entirely new unit and the total emissions at an existing unit after the change (i.e., the sum of the existing emissions before the change plus the emissions increase that results from the change) may not exceed:

(A) For criteria pollutants:

(PROPOSED ALTERNATIVES:

- o The following emissions over the life of the permit:
 - 4 tons of CO;
 - 1 ton of NO_x;
 - 1.6 tons of SO₂;
 - 0.6 tons of PM-10;
 - 1 ton of VOC; or
- o 20 percent of the applicable major source threshold, or 5 tons/yr of VOC or NO_x, whichever is greater, but in no event ~~ne~~ more than 15 tons/yr PM-10 or 0.6 tons/yr lead. or
- o 5 tons/yr; or
- o 30 percent of the applicable major source threshold or 5 tons/yr, whichever is greater.)

~~greater;)~~ OR

- ~~o A unit size established by a State for use within that State, where the State can show that, of the estimated annual emissions of units subject to minor and major NSR in the State, 80 percent or more of the emissions of these units would be from units above that level.~~

(B) For HAP's:

(PROPOSED ALTERNATIVES:

- o 0 tons/yr; or

- (C) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i) of part 52 of this chapter.

(A) Additional conditions:

(2) Any associated recalibration or calibration of continuous emissions monitors (CEM) or operational parameters must be undertaken in accordance with emission rates-to-CEM or operational parameter ratios established in the operating permit program, in the source's permit, or through permit issuance procedures providing at least as much protection as the applicable requirements of the CAA, EPA (in the case of a program delegated pursuant to § 71.10 of this part), EPA, and affected State review and public participation as minor

permit revision procedures; ((DELETE PREVIOUS
PARAGRAPH (2)))

(B) Size restrictions on individual change. No
emissions increase at any unit may exceed:

(1) For criteria pollutants:

(PROPOSED ALTERNATIVES:

- o The following emissions over the life of the permit:
 - 4 tons of CO;
 - 1 ton of NO_x;
 - 1.6 tons of SO₂;
 - 0.6 tons of PM-10;
 - 1 ton of VOC; or
- o 20 percent of the applicable major source threshold, 10 percent of the limit applicable to the unit undergoing the change, or 15 tons/yr VOC or NO_x, whichever is less but in no event less than [2 - 5] tons/yr VOC or NO_x or greater than 15 tons/yr PM-10 or 0.6 tons/yr lead; or
- o 30 percent of applicable major source thresholds, or 15 percent of the limit applicable to the unit undergoing the change, whichever is less, but in no event less than 5 tons/yr for VOC or NO_x.) OR
- ~~o A specified incremental amount established by a State for use within that State, where the~~

~~State can show that, of the estimated annual emissions increases subject to minor and major NSR in the State, 80 percent or more would be above that level.~~

(2) For HAP's:

(PROPOSED ALTERNATIVES:

- o 0 tons/yr; or
- o 20 percent of the section 112 major source thresholds, 50 percent of the de minimis levels set pursuant to section 112(g) of the Act, or 10 percent of the limit applicable to the unit undergoing change, whichever is less; or
- o 75 percent of section 112(g) de minimis levels.)

(3) For other pollutants regulated only under section 111 of the Act, the significance levels in § 52.21(b)(23)(i) of part 52 of this chapter.

(3) De minimis permit revision procedures.

(i) Application. A source may submit an application to the permitting authority requesting the use of de minimis permit revision procedures provided that the permit contains a term or condition that authorizes the source to make use of the de minimis permit revision procedures for qualifying changes, the application meets the requirements of § ~~71.5(f)~~ 70.5(e) of this part, and the permit application includes the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(C) A demonstration that the proposed change meets the criteria for a de minimis permit revision; and

(D) Certification by a responsible official consistent with § ~~71.5(i)~~ 70.5(e) of this part that:

(1) The source is in compliance with any permit terms or conditions it seeks to modify;

(2) The proposed ~~revision~~ ~~modification~~ meets the criteria for use of de minimis permit revision procedures; and

(3) The source accepts all liability of making the requested change prior to final permitting authority action to revise the source's permit.

((ADD NEW PARAGRAPH:

(E) A summary of any required demonstration performed in accordance with paragraphs (f)(2)(i)(E) and (F) of this section, and verification of such demonstration's affirmative approval by the permitting authority.))

(ii) The permitting authority may allow the source to implement the requested change 7 days after the permitting authority's receipt of the source's de minimis permit revision application. At its discretion, the permitting

authority may grant a request by the source to implement the change after less than 7 days.

(iii) Public notification. Public notice shall be provided by the source given ~~of~~ de minimis permit revision applications received by the permitting authority on a monthly, batched basis. At a minimum, the notice shall include: the name and address of the source where the proposed change would occur, a description of the change, the effective date of the permit revision, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs; reference to the pertinent administrative record/public docket; and the name, address, and phone number of a person from whom interested persons may obtain additional information, including the permit application and supporting documentation as described in paragraph (f)(3)(i) of this section. ((ADD TO END OF PARAGRAPH: In addition, for permit revisions involving changes to monitoring or recordkeeping requirements, the permitting authority shall also submit to the publicly available docket the complete demonstration required by paragraphs (f)(2)(i)(E) and (F) of this section, a summary of the demonstration, and an affirmative statement of the demonstration's adequacy.))

(iv) Permit amendment. The permit is revised by attaching the proposed addendum to the permit with the addendum specifying when the permit revision takes effect consistent with the following provisions.

(A) Where the ~~preconstruction~~ permitting ~~agency~~ authority affirmatively approved the change pursuant to a preconstruction review process that included at least a 21-day public comment period and the ~~preconstruction~~ permitting ~~agency~~ authority authorized the change to be made under the de minimis permit revision process, the addendum shall take effect upon submission ~~to the part 71 permitting authority~~ of a complete de minimis permit revision application.

(B) Where the ~~preconstruction~~ permitting ~~agency~~ authority did not affirmatively approve the change pursuant to a preconstruction review that provided for at least a 21-day public comment period, the addendum shall take effect ~~[30-90] days after the date public notice is~~ ~~(30-90) days after the date public notice was given~~ under paragraph (f)(3)(iii) of this section if the ~~part 71~~ permitting authority does not disapprove the request within that time period. The ~~part 71~~ permitting authority shall retain the authority to disapprove such a change made through the de minimis permit revision process for a period of ~~[30-90] days following the date public notice is~~ ~~(30-90) days following the date public notice was given~~ under paragraph (f)(3)(iii) of this section.

(v) EPA and affected State notification.

(A) In the case of a program delegated pursuant to ~~§ 71.10 of this part~~, the ~~part 71~~ permitting authority shall send

a copy of the addendum to the permit to EPA and ~~any affected State~~ within 7 days of the date the addendum takes effect.

(B) In all cases, the permitting authority shall send a copy of the addendum to any affected State within 7 days of the date the addendum takes effect.

(vi) Public request for disapproval.

(A) Within ~~[15-45]~~ ~~(15-45)~~ days of the date public notification ~~is was~~ given, any person may request that the permitting authority disapprove the change if the permitting authority retained authority to disapprove the de minimis permit revision as described under paragraph (f)(3)(iv)(B) of this section.

(B) Where the permitting authority was not required to retain authority to disapprove the de minimis permit ~~modification, revision,~~ the public may petition the permitting authority to revoke the permit revision allowing the change.

(vii) Petition to EPA. In the case of a program ~~delegated pursuant to § 71.10 of this part, the~~ The public may petition EPA to object to the change within 60 days after the end of the ~~[30-90]~~ ~~(30-90)~~ day disapproval period as described in paragraph (f)(3)(iv)(B) of this section where the permitting authority does not grant a request to disapprove the change.

(4) Source liability. If, after a source makes the requested change, the permitting authority disapproves the change or EPA objects to the change (in the case of a

~~program delegated pursuant to § 71.10 of this part), change,~~
the source shall be liable for having operated in violation
of its existing permit from the time at which the source
made the change. Notwithstanding the preceding sentence,
the permitting authority may issue a permit ~~revision~~addendum
that varies from the source's proposed addendum without
rendering the source liable for violating its existing
permit if the proposed addendum includes enforcement terms
sufficient to support an enforcement action and the
permitting authority's revisions are not necessary to make
the change eligible for de minimis permit revision
procedures and do not change the applicant's determination
of which requirements of the Act apply to the source as a
result of the requested change. The source would remain
liable for any violations of the requirements which are
applicable as a result of the change and the source's
proposed permit revision.

(5) The permit shield under § ~~71.6(n)~~~~70.6(f)~~ of this
part may not extend to de minimis permit revisions.

(g) Minor permit revision procedures.

(1) Criteria.

(i) Minor permit revision procedures may be used only
for those permit revisions that:

(A) Do not affect permit terms or conditions that the
source is violating;

(B) Do not involve changes to existing monitoring,
reporting, or recordkeeping requirements in the permit,

unless such changes are necessary to implement other changes that qualify for minor permit revision procedures;

((REPLACE PARAGRAPH (B) WITH THE FOLLOWING: (B)

Involve changes to monitoring or recordkeeping requirements that are:

(1) Changes in the enforceable operating level of the method that, prior to the source's submission of a minor permit revision application, the permitting authority has affirmatively determined the source has demonstrated to be correlated to the source's existing or proposed compliance emissions rate, but such changes may not involve a switch to a new or alternative monitoring or recordkeeping operating parameter;

(2) Changes to a monitoring or recordkeeping method that affect the measurement sensitivity of the method and representativeness of the data (e.g., precision, accuracy, measurement location, or averaging time) such that there may be a measurable effect in relation to the relevant source compliance emissions rate; changes that affect the scope and intent of the existing monitoring method (e.g., modified sample conditioning system, upgraded detector, upgraded data management system); or changes that may be generally applicable to similar monitoring methods in the same or other source categories (e.g., equipment modification for interference avoidance). Such changes may not involve a switch to new or alternative monitoring methods. Prior to the source's submission of a minor permit revision

application, the permitting authority shall have affirmatively determined that the monitoring or recordkeeping change has been demonstrated by the source to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate; or

(3) ~~In the case of a program delegated pursuant to § 71.10 of this part, changes~~ changes to monitoring or recordkeeping methods that have been approved pursuant to major or minor NSR and that are demonstrated therein to have a known relationship and ability to determine compliance with the applicable source compliance emissions rate. The application for the minor permit revision must include supporting documentation from the major or minor NSR permit approval, information regarding the demonstration and approval of the requested monitoring or recordkeeping method, and information in accordance with ~~§ 71.7(g)(2)~~ ~~70.7(g)(2)~~ of this part as related to the monitoring change.))

(C) Do not involve or depend on netting transactions undertaken to avoid being subject to preconstruction review under parts C or D of title I of the Act unless such emissions reductions:

- (1) Have been approved pursuant to a minor NSR process for which a 30-day public comment period was provided; or
- (2) Do not involve any single emissions increase that exceeds the applicable threshold for being a major

modification under parts C or D of title I of the Act, and the sum of all the contemporaneous increases does not exceed the applicable threshold for determining whether ~~a source~~ ~~the change~~ is major;

(D) Do not involve offsets or modifications under section 112(g) of the Act, unless the change has been approved pursuant to a section 112(g) review process;

(E) Are not modifications subject to parts C or D of title I of the Act, unless the change has been approved pursuant to major NSR and would incorporate all applicable requirements determined therein into the part 70 ~~or part 71~~ permit;

(F) ((ADD TO BEGINNING OF SENTENCE: Except for permit revisions solely involving monitoring or recordkeeping requirements,)) Do not seek to establish or change a permit term or condition established to limit emissions which is federally enforceable only as a part 70 ~~or part 71~~ permit term or condition. Such terms and conditions include:

(1) A federally-enforceable emissions cap assumed in the part 70 ~~or part 71~~ permit to avoid classification as a modification under any provision of title I of the Act; and

(2) An alternative emission limit established under the provisions of § 71.6(a)(1)(iii) of this ~~part 70.6(a)(1)(iii)~~ equivalent to a requirement contained in an applicable implementation plan;

(3) An alternative emissions limit established in the part 70 ~~or part 71~~ permit pursuant to regulations promulgated under section 112(i)(5) of the Act;

(4) An emissions limit established in the part 70 ~~or part 71~~ permit pursuant to regulations promulgated under section 112(j) of the Act; and

(5) Any other term or condition for which there is no corresponding underlying applicable requirement and the establishment of which allows the source to avoid an applicable requirement to which the source would otherwise be subject.

~~(G) Are not required by the State program to be processed as a significant permit revision.~~

(ii) Notwithstanding paragraph (g)(1)(i) of this section, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

((ADD NEW PARAGRAPH: (iii) Any demonstration required by paragraph (g)(1)(i)(B) of this section shall include an analysis conducted in accordance with 40 CFR 64.4(b)(5) and 64.4(c) utilizing appendices A, B, C, and D and related appendices of 40 CFR part 64.))

(2) Application. An application requesting the use of minor permit revision procedures shall meet the requirements of ~~§ 71.5(f)~~ ~~§ 70.5(e)~~ of this part and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) An addendum containing the terms and conditions of the source's suggested draft permit revision;

(iii) A demonstration that the proposed change is eligible to be processed as a minor permit revision;

(iv) Certification by a responsible official, consistent with ~~§ 71.5(1)~~ ~~70.5(d)~~ of this part, that:

(A) The proposed change meets the criteria for use of minor permit revision procedures;

(B) The source is in compliance with the permit terms or conditions it seeks to modify;

(C) Public notice of the proposed revision has been provided pursuant to paragraph (g)(3) of this section; and

(D) Notice to the Administrator ~~(in the case of a program delegated pursuant to § 71.10 of this part)~~ and affected States of the proposed revision has been provided pursuant to paragraph (g)(4) of this section; and

(v) An affidavit signed by a responsible official stating that the source accepts all legal risks of making the requested change prior to final permitting authority action to revise the source's permit.

((ADD NEW PARAGRAPH: (vi) For a change involving changes to monitoring or recordkeeping requirements, a summary of any demonstration required by paragraph (g)(1)(i)(B) and performed in accordance with paragraph (g)(1)(iii) of this section and verification of its approval by the permitting authority. If in approving the demonstration the permitting authority determines that subsequent verification testing of the change is necessary, the permitting authority may establish a compliance schedule for performing verification testing to further demonstrate, consistent with paragraph (g)(1)(iii) of this section, the adequacy of the change. Such compliance schedule, after approval by the permitting authority, shall be attached to the addendum described in paragraph (g)(2)(ii) of this section and be processed as a permit term and shall not allow the source to begin verification testing in advance of the time when the source would be allowed to implement the minor permit revision requested change. The approved compliance schedule shall include a commitment by the source to provide the results of the verification testing to the permitting authority within 90 days of submittal of the minor permit revision application. Upon receipt of the verification testing results, the permitting authority shall determine whether the results demonstrate the adequacy of the change consistent with paragraph (g)(1)(iii) of this section. The permitting authority shall promptly notify the source in writing of its determination, and place a copy of

such notice in the public docket. The permit shield under section ~~71.6(n)~~ of this part may extend to minor permit revisions involving monitoring and ~~70.6(f)~~ of this part may extend to minor permit revisions involving monitoring or recordkeeping changes only after any required further verification testing of the change has been completed.))

(3) Public notification.

(i) Immediately upon filing an application for a minor permit revision, the source shall provide notice to the public of the requested minor permit revision by:

(A) Publication of a notice in a newspaper of general circulation in the area where the source is located or in a State publication designed to give the general public notice; and

(B) Sending a letter to persons on a mailing list developed by the permitting authority, including those who previously participated in any public comment process provided for the source's permit and those who request to be placed on a list to receive notification of permit issuance, revision, reopening, or renewal requests.

(ii) In addition to the elements required under § ~~71.11(d)(4)~~ ~~70.7(k)(2)~~ of this part, the public notice shall describe the requested change and state that if no germane and nonfrivolous objection to the requested change is received by the permitting authority within 21 days of publication of the notice, the source may implement the change without the permitting authority providing further

opportunity for public participation. For purposes of this paragraph, a germane objection is one that objects to the use of minor permit revision procedures for the requested change on the grounds that the source has failed to comply with the procedural and notification requirements of paragraphs ~~(g)(3) and (4)~~ ~~(g)(3) and (g)(4)~~ of this section or that the requested change is ineligible for the use of minor permit revision procedures under paragraph (g)(1)(i) of this section. For purposes of this paragraph, a nonfrivolous objection must specify the basis for its objection and present factual or other relevant information in support of its objection.

(iii) The permitting authority shall place a copy of the minor permit revision request in a public docket. ((ADD A NEW SENTENCE: The permitting authority shall also place in the docket any complete demonstration required by § ~~71.7(g)(1)(i)(B)~~ ~~70.7(g)(1)(i)(B)~~ of this part, a summary of the demonstration, the permitting authority's analysis of the demonstration, and an affirmative statement of the demonstration's adequacy.))

(4) EPA and affected State notification.

(i) In the case of a program delegated pursuant to § 71.10 of this part, immediately upon filing an application for a minor permit revision, the source shall notify the Administrator of the requested permit ~~Immediately upon filing an application for a minor permit revision, the source shall notify the Administrator and affected States of the~~

~~requested permit revision in the same manner and subject to the same conditions required of permitting authorities under § 71.10(d) of this part. Such notification shall relieve the permitting authority of the requirement to provide notice to the Administrator of the requested minor permit revision under § 71.10(d) sections 70.8(a)(1) and (b)(1) of this part. Such notification shall relieve the permitting authority of the requirement to provide notice to the Administrator and affected States of the requested minor permit revision under sections 70.8(a)(1) and (b)(1) of this part, but shall not relieve the permitting authority of the requirement to promptly send to the Administrator any notice under § 71.8(b) 70.8(b)(2) of this part.~~

(ii) In all cases, immediately upon filing an application for a minor permit revision, the source shall notify affected States of the requested permit revision in the same manner and subject to the same conditions required of the permitting authority under § 71.8(a) of this part. Such notification shall relieve the permitting authority of the requirement to provide notice to affected States of the requested minor permit revision under § 71.8(a) of this part, but shall not relieve the permitting authority of the requirement to send any affected State any notice under § 71.8(b) of this part.

(5) Timetable for issuance. Upon receipt of an application for a minor permit revision, the permitting authority shall provide at least 21 days for public comment

on the requested change, and shall keep a record of the commenters and the issues raised during the public comment period ~~so that the Administrator may fulfill his or her obligation under § 70.8(d) of this part to determine whether a citizen petition may be granted.~~ Such records shall be made available to the public. The minor permit revision shall occur according to the following procedures:

(i) If the permitting authority receives no public objection to the requested change within 21 days of publication of the public notice, the source may implement the requested change on the 22nd day after publication of the public notice, provided that:

(A) The permitting authority has neither denied the minor permit ~~modification revision~~ ~~revision application~~ nor determined that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(B) ~~In the case of a program delegated pursuant to § 71.10 of this part, the~~

~~(B) The Administrator has not objected to the proposed minor permit revision.~~

(ii) If the permitting authority receives a public objection to the requested change within 21 days after publication of the public notice, the permitting authority must determine within 28 days of publication of the public notice whether the objection is germane and nonfrivolous, and proceed according to the following procedures:

(A) If the permitting authority within 28 days of public notification finds the public objection to be either frivolous or not germane, the permitting authority may respond to the public objection in the course of processing the minor permit revision request as a minor permit ~~revision, revision application,~~ and the source may implement the requested change on the 29th day after publication of the public notice or upon notification from the permitting authority that the permitting authority has determined the public objection to be frivolous or not germane, whichever is first, provided that:

(1) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(2) ~~In the case of a program delegated pursuant to § 71.10 of this part, the~~ The Administrator has not objected to the proposed minor permit revision.

(B) If the permitting authority fails to determine within 28 days after publication of the public notice of the request for a minor permit revision whether a public objection submitted within 21 days of such notice is germane and nonfrivolous, the source may implement the requested change on the 29th day after publication of the public notice, provided that:

(1) The permitting authority has neither denied the minor permit revision application nor determined that the request fails to meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; and

(2) In the case of a program delegated pursuant to § 71.10 of this part, the Administrator has not objected to the proposed minor permit revision.

(C) If the permitting authority finds the public objection to be germane and nonfrivolous, the permitting authority shall not issue a final minor permit revision for the change, and shall either deny the minor permit revision application or determine that the requested change does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures. If the permitting authority continues to process the requested change under significant permit revision procedures, public notice of the proposed change must be provided in the manner required for significant permit revisions under § ~~71.1170-7(k)~~ of this part. Such notice shall provide at least 30 days for public comment on the requested change, shall identify the time and place of any hearing that may be held, and shall include a statement of procedures to request a hearing if a hearing has not already been scheduled. For purposes of this paragraph, such a hearing may be held as soon as 14 days after publication of a notice that the requested change is being processed as a significant permit

revision. The source shall not implement the requested change unless and until the permitting authority approves it as a significant permit revision.

(iii) Any person who filed a public objection pursuant to this paragraph which the permitting authority within 28 days of public notification does not determine to be germane and nonfrivolous may bring suit in ~~Federal State~~ court to compel action by the permitting authority and, in accordance with applicable standards for obtaining such relief under ~~Federal State~~ law, seek an injunction in ~~Federal State~~ court prohibiting the source from implementing the requested change.

(iv) In the case of a program delegated pursuant to ~~§ 71.10 of this part, where~~ the minor permit revision has not been denied or required to be reviewed under significant permit revision procedures, the permitting authority may issue a final minor permit revision after EPA's 45-day review period has elapsed provided the Administrator has not objected to the requested change, or after EPA has notified the permitting authority after the close of the public comment period that EPA will not object to issuance of the minor permit revision, whichever is first, provided that the final minor permit revision does not differ from the draft permit except to the extent any changes to the draft permit qualify for administrative permit amendment procedures under ~~paragraph (e) of this section~~ ~~§ 70.7(e) of this part~~

(v) Within 60 days after the permitting authority's receipt of an application for a minor permit revision, or 15 days after the expiration of EPA's 45-day review (in the case of a program delegated pursuant to § 71.10 of this part), ~~period,~~ whichever is later, the permitting authority shall:

- (A) Issue the minor permit revision as proposed;
- (B) Deny the minor permit revision application;
- (C) Determine that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures; or
- (D) Revise the draft minor permit revision and, in the case of a program delegated pursuant to § 71.10 of this part, if such revision includes any changes that do not qualify for processing as administrative permit amendments under ~~paragraph (e) of this section~~ ~~§ 70.7(e) of this part,~~ transmit to the Administrator the new proposed permit revision as required by § ~~71.10(d)~~ ~~70.8(a)~~ of this part.

(vi) Any person who objected to a minor permit revision request during the public comment period shall be notified by the permitting authority upon final approval of the request. The permitting authority shall also place a copy of its final approval decision in the public docket in which it places minor permit revision requests when received or provide a substantially equivalent means of public access to its final decision.

(6) Reopening of the public comment period. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

(7) Issuance and effective date of permit.

(i) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit.

(ii) A final permit decision shall become effective immediately upon issuance of the decision unless a later effective date is specified in the decision.

~~(8) (6) Source's ability to make change. The source may make the change proposed in its minor permit revision application in accordance with paragraph (g) (5) of this section. The State program may allow the source to make the change proposed in its minor permit revision application in accordance with paragraph (g) (5) of this section.~~ After the

source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (g)(5)(v)(A)-(D) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

~~(9)~~(7) Source liability. If, after a source makes the requested change but prior to a permitting authority's final action to approve the change and revise the permit, the Administrator objects to the proposed minor permit revision ~~(in the case of a program delegated pursuant to § 71.10 of this part)~~, or the permitting authority either denies the minor permit revision or determines that the requested revision does not meet the minor permit revision criteria and should be reviewed under significant permit revision procedures, the source shall be liable for having operated in violation of its existing permit from the time at which it implemented the requested change. Notwithstanding the preceding sentence, the permitting authority may issue a permit revision that varies from the source's application without rendering the source liable for violating its existing permit if the permitting authority's revisions are

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